

<p>TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450</p>	<p>SOLICITOR AUG 16 2007 REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK</p>
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U.S. PATENT & TRADEMARK OFFICE

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court **Eastern District of Kentucky** on the following ☐ Patents or ☒ Trademarks:
at Lexington

DOCKET NO. 05-cv-458-JMH	DATE FILED 10/27/05	U.S. DISTRICT COURT Eastern District of Kentucky at Lexington
PLAINTIFF Krancis Realty, LLC		DEFENDANT Kimberly Bradley Brunson d/b/a Hunter Real Estate Group

PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
¹ 014485		Kimberly Bradley Brunson d/b/a Hunter Real Estate Group
² 014486		Same as above
³ 014487		Same as above
⁴		
⁵		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading

PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

<p>DECISION/JUDGEMENT</p> <p>Remanded to State Court</p>
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CLERK Leslie G. Whitmer	(BY) DEPUTY CLERK Kolleen Reynolds	DATE 8/10/07
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON

FRANCIS REALTY, LLC,)	
)	
Plaintiff,)	Civil Action No. 05-458-JMH
)	
v.)	
)	
)	ORDER
KIMBERLY BRADLEY BRUNSON,)	
and HUNTER REAL ESTATE &)	
ASSOCIATES, LLC,)	
)	
Defendants.)	

On October 27, 2005, Plaintiff filed a notice of removal from Fayette Circuit Court [Record No. 1]. Plaintiff's initial complaint was filed in state court on August 30, 2005, and it alleged violations of the Lanham Act, 15 U.S.C. § 1051 et seq., and various state laws, all arising out of the same set of facts. Defendants answered and asserted several counterclaims based on state and federal law on September 28, 2005.¹

The general removal statute, 28 U.S.C. § 1441(a), applies to "defendants," and Plaintiff claims that it is entitled to removal because it is a "defendant" to counterclaims based on federal law. However, while "[s]everal sections [of the U.S. Code] permit removal by defendants. . . . No section provides for removal by a plaintiff." *Hamilton v. Aetna Life & Cas. Co.*, 5 F.3d 642, 643 (2d Cir. 1993) (affirming an order to remand after a plaintiff

¹ Before removal, Plaintiff also filed an amended complaint reflecting the federally registered trademark claimed by Defendant Hunter Real Estate, which Plaintiff had not known of when it filed its initial complaint.

improperly removed based on a federal counterclaim); see also *Ballard's Serv. Ctr., Inc. v. Transue*, 865 F.2d 447, 449 (1st Cir. 1989) (holding that plaintiffs cannot remove). As Wright and Miller put it, "[p]laintiffs cannot remove, even when they are in the position of a defendant with regard to a counterclaim asserted against them." Charles Alan Wright et al., 14 Federal Practice and Procedure § 3731 at 253 (3d ed. 1998) (listing many cases in which courts have remanded cases after plaintiffs have filed for removal based on federal counterclaims).

Removal jurisdiction exists to protect defendants, and there is no purpose served by allowing a plaintiff who chose to submit to the jurisdiction of the state court to remove its own case, especially when the plaintiff's own claim included the same type of federal allegations as the counterclaims. Nor is there any statutory basis for allowing removal in these circumstances.

Accordingly, **IT IS ORDERED** that this action be, and the same hereby is, **REMANDED** to Fayette Circuit Court.

This the 31st day of October, 2005.



Signed By:

Joseph M. Hood *JMH*

United States District Judge